



Linda S. Adams  
Secretary for  
Environmental Protection

# California Environmental Protection Agency

Air Resources Board • Department of Pesticide Regulation • Department of Toxic Substances Control  
Integrated Waste Management Board • Office of Environmental Health Hazard Assessment  
State Water Resources Control Board • Regional Water Quality Control Boards



Arnold Schwarzenegger  
Governor

Certified Mail: 7003 1680 0000 6174 8968

March 14, 2007

Mr. Larry Arfsten  
Fire Chief  
City of Hayward Fire Department  
777 B Street, 4<sup>th</sup> Floor  
Hayward, California 94541

Dear Mr. Arfsten:

The California Environmental Protection Agency (Cal/EPA) and State Water Resources Control Board conducted a program evaluation of the City of Hayward Fire Department Certified Unified Program Agency (CUPA) on February 21 and 22, 2007. The evaluation was comprised of an in-office program review and field oversight inspections. The State evaluators completed a Certified Unified Program Agency Evaluation Summary of Findings with your agency's program management staff, which includes identified deficiencies, with preliminary corrective actions and timeframes, program observations and recommendations, and examples of outstanding program implementation.

The enclosed Evaluation Summary of Findings is now considered final and based upon review, I find that the City of Hayward Fire Department CUPA's program performance meets or exceeds standards.

Cal/EPA also noted during this evaluation that the City of Hayward Fire Department CUPA has worked to bring about a number of local program innovations, including: maintaining excellent coordination with all the other CUPAs in Alameda County, collecting 99% of the permit fees, and coordinating, moderating, and participating in City wide Code Assistance Meetings. We will be sharing these innovations with the larger CUPA community through the Cal/EPA Unified Program web site to help foster a sharing of such ideas statewide.

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Thank you for your continued commitment to the protection of public health and the environment through the implementation of your local Unified Program. If you have any questions or need further assistance, you may contact your evaluation team leader or Jim Bohon, Manager, Cal/EPA Unified Program at (916) 327-5097 or by email at [jbohon@calepa.ca.gov](mailto:jbohon@calepa.ca.gov).

Sincerely,



Don Johnson  
Assistant Secretary  
California Environmental Protection Agency

Enclosure

cc: Mr. Hugh Murphy (Sent Via Email)  
Hazardous Materials Program Coordinator  
City of Hayward Fire Department  
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Hayward, California 94541

Mr. Sean Farrow (Sent Via Email)  
State Water Resources Control Board  
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Sacramento, California 94244-2102

Mr. Kevin Graves (Sent Via Email)  
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Mr. Charles McLaughlin (Sent Via Email)  
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Ms. Vickie Sakamoto (Sent Via Email)  
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cc: Mr. Brian Abeel (Sent Via Email)  
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Mr. Mickey Pierce (Sent Via Email)  
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## **CERTIFIED UNIFIED PROGRAM AGENCY EVALUATION SUMMARY OF FINDINGS**

**CUPA:** City of Hayward Fire Department Unified Program

**Evaluation Date:** February 21 and 22, 2007

### **EVALUATION TEAM**

**Cal/EPA:** JoAnn Jaschke

**SWRCB:** Sean Farrow

This Summary of Findings includes the deficiencies identified during the evaluation, observations and recommendations for program improvement, and examples of outstanding program implementation activities. Questions or comments can be directed to JoAnn Jaschke at (916) 323-2204.

	<b><u>Deficiency</u></b>	<b><u>Corrective Action</u></b>
1	<p>The CUPA is not consistently ensuring facilities' Return to Compliance (RTC) for minor violations identified during compliance inspections. The following files did not have a certification or re-inspection to confirm RTC within the timeframes specified on the Inspection Reports and/or Notices to Comply for the most recent inspections conducted: Central Freight Lines, Inc., Morgan Advanced Ceramics (WESGO), and Shutterfly, Inc.</p> <p><b>Citation:</b> HSC Chapter 6.11, Section 25404.1.2(c) and HSC Chapter 6.5, Section 25187.8</p>	<p>The CUPA corrected this deficiency. During the evaluation, the CUPA contacted facilities with outstanding Notices to Comply. As of March 8, 2007, the CUPA has confirmed that over 95% of the facilities with outstanding Notices to Comply have returned to compliance.</p> <p>During the evaluation, the CUPA revised their procedure for tracking Notices to Comply. The revised procedure includes a thorough follow-up process for addressing delinquent notices to comply. Monthly, support staff will contact facilities with pending notices and notify the Hazardous Materials Investigator. The investigators will follow up with the facilities. Additionally, during their monthly staff meeting, the support staff will report on the new notices issued, the number of outstanding notices, and the number of facilities that have returned to compliance. (See attached policy.)</p>

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<b>2</b>	<p>The CUPA has not documented how it expends at least 5% of its hazardous waste related resources to the oversight of Universal Waste handlers other than silver-only generators. (Silver-only generators are fully regulated as CUPA facilities.</p> <p><b>Citation:</b> HSC Chapter 6.5, Section 25201.4(c) and CUPA forum board position</p>	<p>The CUPA corrected this deficiency during the evaluation by documenting the activities they are doing in a new policy that reflects current activities.</p>
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**CUPA Representative**

Hugh Murphy  
(Print Name)

Hugh Murphy  
(Signature)

**Evaluation Team Leader**

JoAnn Jaschke  
(Print Name)

JoAnn Jaschke  
(Signature)

Certified Unified Program Agency (CUPA)  
Evaluation Summary of Findings

**PROGRAM OBSERVATIONS AND RECOMMENDATIONS**

*The observations and recommendations provided in this section simply address those areas not specifically required of the CUPA by regulation or statute and are provided for continuous program improvement only.*

1. **Observation:** Over the last three FYs (FY 03/04, 04/05, and 05/06) the CUPA has coursed 14 formal enforcement actions through the District Attorney's (DA) Office. A total of \$46,294, in fines and penalties have been settled for some of these cases. The CUPA has established several enforcement options within their Inspection and Enforcement Plan, including conducting office hearings, revoking permits and licenses, consulting and referring cases to the DA, and issuing administrative orders. The DA recommends that the CUPA directly refer cases to them. Therefore, as a general rule, the CUPA refers formal enforcement cases to the DA.

**Recommendation:** The CUPA should continue reporting the number of violations and enforcement actions taken, including but not limited to office hearings and any case referrals to the DA on the Annual Enforcement Summary Report (Report 4) submitted to Cal/EPA to ensure the report accurately reflects any and all enforcement activities undertaken by the Hayward Fire Department, Hazardous Materials Office.

2. **Observation:** The Return to Compliance (RTC) for Underground Storage Tanks (UST) is not annotated on the inspection checklist or written down in file when completed. The CUPA tracks the RTC of UST's in their database and once in compliance, notification is sent to the Environmental Specialist who in turn issues the operating permit.

**Recommendation:** Add a RTC block to the inspection checklist or add a section to current RTC form for UST's.

3. **Observation:** Continue the outstanding inspection frequency.

### **EXAMPLES OF OUTSTANDING PROGRAM IMPLEMENTATION**

1. The CUPA's coordination with all the other CUPAs in Alameda County is commendable. The CUPA hosts monthly coordinated agency meetings for all the CUPAs in Alameda County. During the meeting, the CUPAs discuss Unified Program implementation, consistency, enforcement, and technical issues. The CUPA also hosts the monthly Alameda County Environmental Enforcement Task Force Meetings. Typically, between 24 to 40 people attend the meetings from the following agencies: CUPAs, POTW's, Fish and Game, BAAQMD, DTSC, Alameda County DA, Alameda County Flood Control, US Attorney, as well as other law enforcement and regulator agencies. The group receives training and discusses enforcement issues and plan for task force approaches to enforcement. The CUPA also judges and participates in the annual City sponsored Environmental Achievement Awards and the Alameda County's Green Business Program. The CUPA is a participant in a Coordinating Agencies Agreement with Alameda County Environmental Health, the City of Berkeley, the City of Fremont, the City of Oakland, the Cities of Pleasanton and Livermore, the City of Newark, the City of San Leandro, and Union City with in Alameda County. The Agreement requires the CUPAs to adopt processes for the administration of the Unified Program that is coordinated, consistent, and less fragmented. The CUPA achieves this by the aforementioned coordinated activities.
2. Over all, the CUPA is highly organized and maintains thorough, well written documentation on their policies and procedures for implementing the Unified Program elements. Their files are consistent, making it easy to locate information. The CUPA also writes a robust self-audit each year. The CUPA inspectors conduct very thorough inspections by looking at Hazardous Material Storage Permits, Hazardous Materials Business Plan, Hazardous Waste Generators, and Fire Code requirements. Inspectors also write a very detailed description of the inspection to include the technician who performed the certification (ICC number, equipment certification numbers and expiration dates), site map showing the layout of the facility and much more.
3. The CUPA interacts well with the first responders and does a good job at keeping them informed of changes that occur at facilities. The CUPA manager is available 24/7 in case of emergencies involving any of the regulated CUPA facilities. The CUPA is working on a GIS database that incorporates the use of WiFi for its program needs and for first responders. This system geographically shows locations of Target Hazards, contaminated sites, and CUPA facilities under each program element. Target Hazards are identified using the following criteria:
  - Large loss of life;
  - Large fire loss;
  - A large concentration of materials that will burn rapidly;
  - A concentration of materials of high monetary value;
  - The need for outside agency assistance;
  - Activation of "Fire and Rescue";
  - Activation of "Emergency Operations Center";
  - Exposure of a large offsite population to a release of hazardous materials found in the facility;
  - Exposure of a large offsite population to a hazardous materials generated by the incident;
  - Short-term damage to the environment;

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- Long-term damage to the environment; and
- Spread of the incident over a large geographic area.

In the meantime, the Fire Department requires KNOX boxes at target facilities. The boxes contain all the information about the facility that will help first responders when responding to an emergency – chemical inventory, facility maps, keys to the facility, location of hazardous waste and USTs as well as emergency contact information.

4. The technical assistance provided to facilities by the CUPA is remarkable. The CUPA sends out yearly Customer Satisfaction Surveys to help determine the best approach to assist facilities. Their assistance is also coordinated with other departments. The CUPA coordinates, moderates, and participates in City wide Code Assistance Meetings. The Code Assistance Meetings provide an opportunity for businesses to introduce proposed projects and gather information/guidance from knowledgeable staff on the California Fire Code requirements, Hazardous Material requirements, and the California Building Code requirements. In the FY 05/06, the CUPA conducted 46 Code Assistance Meetings. Additionally, the CUPA reviews business licenses to ensure that new businesses understand the Unified Program requirements and are being regulated. The CUPA sends out an introduction packet to new business. Additionally, the CUPA will conduct introductory site visits of new businesses as necessary. The CUPA also participated in the annexation process of incorporating the following unincorporated areas of Depot Road Island, Dunn Road Island, and Saklan Road Island into the City of Hayward.
5. Year-in and year-out, the CUPA collects approximately 99% of their permit fees. Delinquent permit-fee facilities are issued notices to appear in a hearing before the CUPA Coordinator. Facilities typically pay the fees and forego the hearing for non-payment. Since this approach has been successful, the CUPA is discussing the possibility of requiring facilities that fail to submit updated or new HMBP to also appear in a hearing similar to those established for non-payment of their permit fees.
6. The CUPA implements programs closely related to the UP elements that complement and exceed the requirements of the Unified Program. These include enforcement of California Fire Code (CFC) in hazardous materials facilities, permitting of hazardous materials facilities below HMBP thresholds through the CFC and the Hazardous Materials Storage Ordinance, and oversight and coordination of clean up activities in contaminated sites.



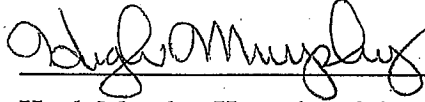
**Hayward Fire Department  
Hazardous Materials Office  
INSPECTION PROCEDURES**

**I/P No.**     0018PG-1

**Title**                     :     **Procedures for Tracking Notices to Comply**

**Issue Date**             :     May 18, 2004

**Last Revision Date**   :     February 22, 2007

**Approved by**           :       
Hugh Murphy, Hazardous Materials Program Coordinator

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**PROCEDURES**

When no specific orders are issued, the Hazardous Materials Investigator shall issue a NOTICE TO COMPLY to a facility that has just been inspected for all Class II hazardous waste generator program violations and all minor violations under the other Unified Program elements. The three-part (white, blue, and yellow) Notice to Comply (Summary of Violations) form will be used for this purpose and the following procedure shall be followed.

1. Investigator shall complete the form by writing in the Facility name, Facility Address, Name of Contact, telephone number, Inspector's name, and the date of the inspection.
2. Investigator shall indicate violations found by properly marking off corresponding items on the list, on the form.
3. Under "Comments," Investigator shall direct the facility contact to other parts of the inspection report for details on the violations and the corrective action expected of the facility.
4. Inspector shall explain to the facility contact the violations, the corrective actions required, and the period he is allowed to effect compliance.
5. Inspector shall ask the facility contact to sign the completed three-part Notice to Comply form.
6. Inspector shall leave with the facility contact two parts of the Notice to Comply form: the top white original and the middle yellow part. Inspector shall explain the printed instructions on the lower portion of the form to the facility contact: that after the violations are corrected within the time period allowed, the facility

contact shall sign the original (white) part and mail it back to the Hayward Fire Department.

7. Upon returning from inspection, the Investigator shall record the inspection in CUPA DMS and RMIS systems. Information on the Notice to Comply will be entered in CUPA DMS, using the blue bottom part, the Investigator's copy.
8. The inspection report and inspection notes shall be filed in the facility file, except the blue part of the Notice to Comply.
9. The blue part of the Notice to Comply shall be forwarded to the Secretary for filing in the binder labeled "Notice to Comply – PENDING." The Notices are filed in this binder chronologically, separated by tabs into months.
10. When a white original top of a Notice to Comply is received from a facility, the secretary will forward it to the Investigator named on the Notice.
11. The Investigator will verify that the Notice has been signed and dated properly and will clear the Notice in the CUPA DMS database. He will then indicate on the Notice that it has been CLEARED & POSTED and return the same (white original) to the Secretary.
12. The secretary will retrieve the blue copy of this Notice from the PENDING binder, stamp it CLEARED & POSTED, write the date on it, and move it to the "Notice to Comply – CLEARED" binder. The Notices are filed in this binder chronologically, separated by tabs into months.
13. The white original Notice is filed in the facility folder, in sequence, on top of the corresponding report for the inspection conducted on the day the Notice was issued to the facility.

### **FOLLOW-UP PROCESS FOR DELINQUENT NOTICE TO COMPLY**

To ensure prompt return of Notice to Comply forms issued to inspected facilities, the following steps shall be taken for a more consistent follow-up:

1. Once a month, on or around the end of each month, clerical staff shall review the "date due" on the PENDING notices. Clerical staff will then call the contact person named on the notice by telephone to remind him or her of the past-due notice.
2. Clerical staff will note the date and time of the phone call on the blue part of the notice itself.
3. Notice to Comply subsequently received for these delinquent notices shall be processed as described in the "Procedures" above.

4. Clerical shall make copies of the blue Notice to Comply forms annotated with a telephone contact (the month before) that still remain in the PENDING folder on the next monthly review. These copies shall be forwarded to the Hazardous Materials Investigator.
5. The Hazardous Materials Investigator shall follow up on the delinquent Notice to Comply with another telephone call to the contact, with a follow-up facility inspection, and/or with a Notice of Noncompliance (Notice of Violation).
6. At the monthly staff meeting held on the first Wednesday of each month, clerical staff will give a summary report on the Notice to Comply process. The report will contain the following data for the month just ended:
  - (a) Number of (new) Notice to Comply received during the month and added to the PENDING binder.
  - (b) Number of delinquent Notice to Comply from previous months (from the beginning of the calendar year to the end of the report month)
  - (c) Number of facilities contacted by telephone during the month to remind them of their delinquent Notice to Comply
  - (d) Number of Notice to Comply cleared on time, without a telephone reminder
  - (e) Number of delinquent (previously reminded by telephone call) Notice to Comply that were cleared during the month
  - (f) Number of delinquent Notice to Comply (previously reminded by telephone call but were not cleared during the month) referred to the Hazardous Materials Investigators.

The Hazardous Materials Investigator shall treat the non-return of a Notice to Comply as a CUPA violation.

**Flowchart for three-part Notice to Comply Form:**

